IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6660 & 6662 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE JAYANT PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

IMRANALI RAJABHAI POLARA (MINOR)

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 6660 & 6662 of 2004

MR MUKUL SINHA for Petitioner No. 1

Mr.H.D.Dave, Asst.GOVERNMENT PLEADER for Respondent No. 1-2

CORAM : HON'BLE MR.JUSTICE JAYANT PATEL

Date of decision: 02/07/2004

ORAL JUDGEMENT

Draft amendment granted.

2. The short facts of the case are that both the petitioners passed 12th standard in the year 2003 and had applied for admission in medical course for academic year 2003-04. They were holding the certificate of SEBC and pending the finalisation of admission process, the SEBC certificate was cancelled by the Director exercising his supervisory powers on the ground that there is no authenticated material available regarding the proof of cast of the petitioner concerned. The petitioners challenged the said decision by preferring SCA Nos 17084 & 15578/03. It appears that pending the petitions on account of cancellation of SEBC certificate the petitioners were considered for admission in general category. The petitioners of SCA No.6660/04 took admission in B.A.M.S course in Govt.Akhand Anand Ayurvedic College, Ahmedabad and the petitioners of SCA No.6662/04 took admission in EC branch of B.E in L.D.Engineering College, Ahmedabad. The aforesaid statement is also made in the draft amendment which is tendered today. Ultimately, in the aforesaid SCA this court (Coram:M.S.Shah,J) delivered judgment on 17.1.2004 whereby for the reasons recorded in the judgment, quashed the decision of the Director of cancelling the SEBC certificate and this court directed for reconsideration of the issue. However, it is the further case of the petitioners that since the academic year of 2003-04 was over the court at para 18 it was observed that "in case the petitioners are ultimately found to be belonging to SEBC class their claim can be considered to admission for various courses in the academic year 2004-05. It appears that thereafter the Director reconsidered the matter and ultimately as per order, dated 14.6.04 found that now authenticated material is produced and restored the status of SEBC to the petitioners. Relying upon the restoration of status of SEBC, the petitioners, once again, applied for admission to medical course for the academic year 2004-05. However, their forms were not accepted initially and thereafter they were accepted with remarks as "not eligible" on 8.6.04. Under the circumstances, the petitioners have approached this court for directing the respondents to give admission to the petitioners in MBBS for the academic year 2004-05 in SEBC category.

3. I have heard Mr.Sinha, Ld.counsel for the petitioners and Mr.H.D.Dave, Ld.AGP for the authorities.

4. It is also the case of the petitioners that there was wrong interpretation on the part of the authority of rule providing for qualification and eligibility

criteria. It has been submitted on behalf of the petitioners that now the process of finalising the admissions for the academic year 2004-05 has commenced and therefore the authority should be directed to consider the matter as prayed for in the petition.

5. On behalf of the State Govt Mr.Dave, Ld.AGP submitted that the rule providing for eligibility criteria states that the candidate should have passed HSC held in the month of March/April of the current year or the supplementary examination of the preceding year and as the petitioners are not satisfying either and as the petitioners have passed the examination in the month of March/April, 2003, i.e. previous year, they would not be qualified for applying for admission. It is further submitted that as stated by the petitioners it is on the basis of cancellation of SEBC certificate at the relevant point of time petitioners for the academic year 2003-04 opted for admission and they have already taken admission in the general category and it has been submitted that in view of the order, dated 1.10.03 passed by this court in SCA No.13777/03 the student who is prosecuting studies in one course can not be considered eligible for applying to other course by getting fresh admission. Therefore, it has been submitted that the petitioners would not be entitled for any of the reliefs.

6. There is no dispute on the point that the SEBC certificate was cancelled and it is also admitted position that as per the order, dated 14.6.04 passed by the Director upon the evidence made available, the status of SEBC is restored. Mr.Sinha, Ld.counsel for the petitioners submitted that the rule can not be made applicable in respect of the litigation which was pending and in which the petitioners ultimately succeeded. He further submitted that in view of express observations made by this court at para 18 in its decision dated 17.1.04 in the above referred special civil applications, which were preferred by the petitioners, the claims of the petitioners are required to be considered for admission for the academic year 2004-05 and therefore he submitted that with a view to render complete and full justice to the petitioners the direction deserves to be issued for as SEBC students in the academic year 2004-05.

7. There can not be any dispute to the proposition that the court would consider the matter for rendering complete and full justice but it appears that when this court considered the matter on 17.1.04 the attention of

the court was not drawn on the aspect that the petitioners have already taken admission in general category in academic year 2003-04. Had it been a case where the student concerned did not opt for admission in anyother category in the academic year 2003-04 possibly the matter can be viewed differently, but if the admission is already taken by student concerned and the student concerned is prosecuting studies, the larger question which is required to be considered is that can such shifting of the seat be permitted in midstream of the education of A to B branch and the same would be coupled with the aspect that the petitioners have taken admission in general category in the Govt colleges where standard of fee is very much low in comparison to self-financed colleges imparting education of Ayurvedic or Electronic Engineeringas the case may be. The question which is required to be considered by the court would if the petitioners are allowed to leave the study in the midstream and if the authority is permitted consider them for admission for the academic year 2004-05 the effect would be of the lapse of seat for which the petitioners are already undergoing the study and they have practically completed about one year of their study in their respective course. It appears that the aforesaid aspects could not be considered by this court (Coram: M.S.Shah,J) when the judgment was delivered on 17.1.2004 possibly because at the relevant point of time even the petitioners did not declare before the court that they have already taken admission for the academic year 2003-04. If the matter is viewed strictly, it can be said that there was suppression of material facts on the part of the petitioners in not disclosing the relevant aspects at the time when the matter was considered for final disposal by this court. Even if the lenient view is taken keeping in view the status of the petitioners as of students, the observations may at the most be considered keeping in view the facts and circumstances that the petitioners have already taken admission for the academic year 2003-04.

8. When any student has already taken admission in A or B branch of the professional courses and if in the midst of education or after completion of more than one year, the change of course is permitted, the same would result into allowing the seat which the student is studying to waste and consequently it may result into wastage of public money and public time for all times to come. The reference may be made to the decision of this court in the matter of Hitesh Jiravala & Ors vs State of Gujarat & Ors reported in 2003(3) GLH 730. In the said decision the question as to whether the jumping in the

Post-Graduate Medical faculty between one branch to another branch after taking admission should be allowed to be permitted or not had arisen for consideration. Rule of the University provided for such change. In the said decision at para 5 this court after extracting the view expressed in its earlier decision and also the view expressed by the Division Bench of this court in LPA observed as under:

> "Therefore, on the basis of same reasons, in my view, the Rule 4(4) which is pressed in service by Mr.Nanavaty deserves to be struck down because if such rule is allowed to be operated it would defeat the public interest as much as it would result into foreclosing opportunities of large number of aspirant and eligible students for Post-Graduate degree in Medical facility and it would also result into wastage of public money and time and as a consequence thereof it would also result into depriving the society the services of Post-Graduate doctors which is rather a fundamental and basic need of the society in any atmosphere. There is no rational basis for such rule and it would be rather irrational if the seats allowed to lapse and the public money is allowed to be wasted and opportunities of other doctors holding degree of MBBS are foreclosed."

Ultimately, Rule 4(4) was declared as ultravires, unconstitutional and violative of Article 14 of the Constitution of India.

9. In case of a situation, where the rule provided for such change of admission, this court found that there is no rational basis allowing the seat to be lapsed and resulting into situation of wastage of public money and foreclosing of opportunities of other students for the seat of Post Graduation in MBBS and ultimately declared the rule as unconstitutional and struck down the rule. If such reasonings as recorded in the decision of Hitesh Jiravala (supra) are considered, in the present case also if the contention of the petitioners is accepted the consequences would be that the seats over which the petitioners are studying in case of Ayurvedic Medicine and Engineering, as the case may be, would lapse and as an outcome of the same, it would also result into wastage of public money because no other student can be admitted over the seat of the petitioners who have taken admission in respective college of Ayurvedic and Engineering, as the case may be.

10. Mr.Sinha, Ld.Counsel appearing for the petitioners made an attempt to submit that it was not on account of volition on the part of the petitioners, admission was taken because the petitioners at the relevant point of time had no option and therefore the same not be allowed to operate as bar to the petitioners in asserting right for admission in the academic year 2004-05. I am afraid such contention can be accepted because there is no material placed on record to show that the petitioners have taken admission under protest or without prejudice to the rights and contention in the proceedings in the above referred petitions which have been disposed of on 17.1.2004. Had such aspects been declared, possibly the authority also could have considered the matter as to whether the admission should be granted or not. The petitioners having not taken admission under protest, it can be said that there is voluntary action on the part of the petitioners of taking admission in the academic year 2003-04. Even if the action is taken as that of "under compelling circumstances", then also in view of the above referred decision in the case of Hitesh Jiravala(supra) the court while issuing direction under Article 226 of the Constitution of India would not create a situation which would result into allowing the seats to be lapsed and to wastage of public money and of foreclosing the opportunity of students concerned at the relevant point of time for all times to come. Therefore, considering the aforesaid peculiar facts and circumstances, even if the matter is to be considered for rendering full and complete justice on account of restoration of status of SEBC to the petitioners, it would not be a case for giving direction which may create a situation of allowing the seats to be lapsed and wastage of public money. Even the judicial notice can be taken that the State Govt is spending huge money for education in Medical and Engineering faculties at Govt colleges like the college in which the admissions are already taken by the petitioners in the year 2003-04. Therefore, considering the aforesaid facts and circumstances, once the petitioners have already taken admission for the academic year 2003-04, can not be granted writ giving direction to the respondent authorities to treat the petitioners as eligible and to consider for admission for academic year 2004-05.

11. Even if the observations at para 18 made by this court in its decision dated 17.1.2004 in the above referred both petitions are considered, the language used by the court is "in case petitioners are ultimately found

to be belonging to SEBC their claim can be considered for admission to various courses for the academic year 2004-05". Therefore, the language used "can be considered" can not be interpreted as "must be considered and granted in favour of petitioners". As observed earlier, the fact regarding taking admission in the academic year 2003-04 was not disclosed by the petitioners at the relevant point of time and such direction can not be validly pressed in service. Even if such observations are to be considered, then also as observed earlier, this court having considered the case of the petitioners for the academic year 2004-05 has found that if such writ is issued it would result into allowing the seats to lapse and wastage of public money and therefore also the observations made at para 18 would be of no help to the petitioners for asserting their right to claim admission for the academic year 2004-05.

12. In view of the aforesaid, it is not necessary for this court to examine the question regarding the scope and ambit of rule providing eligibility criteria for admission in the year 2004-05 and as to whether such rule would apply to petitioners or not because this court has found that even if rule does not apply the direction can not be given for giving fresh admissions to petitioners for the year 2004-05.

13. Mr.Sinha, Ld.counsel for the petitioners submitted that it is on account of wrong action on the part of State authorities the petitioners were compelled to take admission for the academic year 2003-04 and therefore the petitioners may not be put to peril. I find that the said aspect is not required to be examined at this stage because even for examining the said contentions it may be required to be considered the documents available before the Director at the time when the certificate was cancelled and the documents available with the Director when the status is restored and as to where there was compulsion on the part of petitioners or voluntary action to take admission in the year 2003-04. Such questions are essentially of facts which can not be finally concluded in the present proceedings for assessing the loss or damage. Suffice it to say that if the petitioners are so advised and if it is otherwise legally permissible, the petitioners may take action in connection with the loss caused to them for the period during which the certificate remained as cancelled. As such while examining such aspects the court may also be required to consider the conduct of both sides and the consequences arising therefrom. I find it proper to leave the matter at that stage on the said aspect.

14. In view of the above, both the petitions fail and hence they are dismissed. Rule in each petition is discharged. Considering the facts and circumstances, there shall be no costs.

02.7.04 (JAYANT PATEL,J)